

CRM-M-56951-2024

209 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-56951-2024
Reserved on: 10.01.2025
Pronounced on: 30.01.2025

Kuldeep @ Rathi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rohit Mittal, Advocate for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
388	10.11.2023	Sadar Mahendergarh, District Mahendergarh	186, 307, 353, 427, 201, 34 IPC and 25 of the Arms Act

1. The petitioner incarcerated in the FIR captioned above came before this Court under Section 439 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. Per paragraph 9 of the bail application and para 8 of reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	140	13.03.2020	147, 149, 323, 427 and 506 IPC	Mahendergarh, District Mahendergarh
2.	338	31.07.2021	61/4/20 of Excise Act	City Mahendergarh, District Mahendergarh
3.	409	30.09.2021	148, 149, 323, 452 and 506 IPC	City Mahendergarh, District Mahendergarh
4.	485	02.12.2021	148, 149, 427, 506 and 509	City Mahendergarh, District Mahendergarh
5.	529	26.12.2021	25/54/59 of Arms Act	City Mahendergarh, District Mahendergarh
6.	387	06.09.2021	61/4/20 of Excise Act	City Mahendergarh, District Mahendergarh
7.	186	07.06.2022	148, 149, 323 and 506 IPC	City Mahendergarh, District Mahendergarh
8.	100	17.03.2023	307, 341, 506, 34 IPC and Sections 25/54/59 of Arms Act	Sadar, Mahendergarh, District Mahendergarh
9.	288	04.09.2022	61/4/20 of Excise Act	City Mahendergarh, District Mahendergarh

3. The facts and allegations are taken from the status report dated 30.12.2024, which reads as follows:

“ That the brief facts of the case are that on 09.11.2023, SI Devender Singh alongwith HC Satyawart no.306/NNL, HC Sunil no.445/NNL, SPO Sudhir no.287/NNL in govt. vehicle bearing registration no. HR-35GV-4753 which was being driven by Sandeep (Koshal Rojgar) was present at Akoda Bus Stand for patrolling duty where an information was received from an informer that 5-6 young boys armed with weapons were entering in village Khudana in two vehicles bearing registration no. 66C/3725 'Auro' car and HR-26DK-1216 'Brezza' and they may commit any offence. On the said information, at about 7:30 PM the police party reached at village Khudana bus stand and they saw a white colour Auro car coming from the side of Khudana village. The said car was signalled to stop. However, the driver of the said car hit their car to the official vehicle of the police with intention to kill them. They fled away towards the Khudana Bani alongwith their car. When the police chased the said car, they also found the 'Brezza' car in the Banni in damaged condition. The said 'Brezza' car was taken into police custody. The assailants also fired upon the police to kill them. The police searched for the assailant, but they could not be apprehended. On 10.11.2023, SI Devender alongwith police officials reached at village Pathera canal and they found the said 'Auro' car in damaged condition, which was taken into police possession and parked at a safe place. Thereafter, SI Devender Singh alongwith his fellow officials reached on the spot at village Khudana and enquired about the assailants but no clue was traced. The assailants who came in Brezza car and Auro car and hit the police's vehicle with intention to kill them have committed an offence punishable u/s 186, 353, 427, 307 and 34 of IPC and section 25-54-59 of ARMS Act whereupon, SI Devender Singh sent a writing (tehrir) to police station through HC Sunil Kumar no.445/NNL for registration of the case and he made the request to send the another investigating officer to conduct the further investigation as he (SI Devender Singh) became the complainant in the present case and on the basis of said tehrir, the present case vide FIR No. 388 dated 10.11.2023 u/s 186, 353, 427, 307 and 34 of IPC and section 25-54-59 of Arms Act was registered at Police Station, Sadar Mahendergarh against unknown persons who were sitting in Auro car no. HR-66C-3725 and Brezza car no. HR-26DK-1216 and investigation was launched.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family. He further prayed for bail on the ground of parity with co-accused Aman who was granted bail by this Court vide order dated 19.11.2024 passed in CRM-M-39393-2024.

5. The State's counsel opposes bail and refers to the reply.

6. The petitioner is not entitled for bail on the ground of parity with the co-accused namely Aman, who was granted bail by a Co-ordinate Bench of this Court in CRM-M-39393-2024 titled as Aman Vs.State of Haryana for the reason that it was explicitly mentioned in para 7 of the bail order that the petitioner had clean antecedents, whereas, in the present case the petitioner has massive criminal history out of which 5 cases are of assault. The petitioner's custody is not a sufficient ground for allowing the bail petition of the petitioner.

7. The allegations are serious but this Court certainly would not have denied the bail if the petitioner had no criminal antecedents. The problem with the petitioner is that he has 09 cases out of which 5 cases are of assault. It shows that whenever the Court had taken a lenient view and had granted the bail to the petitioner he has again repeated the crime.

8. It would be appropriate to refer to the following portions of the reply, which read as follows:

“That the allegations levelled against the petitioner are serious in nature. It is pertinent to mention here that petitioner alongwith other co-accused persons hit the vehicle of police and fired a shot with intention to kill them. The vehicle bearing registration no.66C/3725 Auro car which was used in the commission of crime belongs to the co-accused Aman as he was found to be driving the said Auro car and the said car was also recovered from his conscious possession. Furthermore, the petitioner alongwith the other co-accused hit their Auro car to the vehicle of the police with intention to kill them. It is submitted that as per record of Police Station, Sadar Mahendergarh, the petitioner has criminal antecedents as nine more FIRs for the commission of various offences punishable under sections 147, 148, 149, 323, 427, 452, 506, 509, 307, 341 IPC and 61-4-20 Excise Act etc. have already been registered against him. The petitioner and co-accused persons hit their car to the official vehicle of the police with intention to kill them and the other assailants also fired upon the police party with intention to kill them. It is pertinent to mention here that co-accused Nitin @ Fauji who is also an accused in the present case was also found involved in the murder of Sukhdev Singh Gogamedi (Rajasthan) and the present petitioner was accomplice of Nitin @ Fauji. It is submitted that co-accused Nitin @ Fauji, Rahul and Bhawani @ Roni are yet to be arrested in the present case. That there are specific allegations against the petitioner and other co-accused persons which are serious in nature. It is submitted that three prosecution witnesses are yet to be examined in the present case and in case the petitioner, who has direct proximity with the alleged occurrence, is granted benefit of bail then there is every possibility that he may influence the witnesses and may hamper the trial. At this stage, there is no

reason to disbelieve the prosecution version. The mere fact that the petitioner is in custody since long time is not sufficient to re-appreciate the facts while considering the request for extending concession of bail. Hence, keeping in KARAN view the above facts as well as seriousness of the offence and the role played No. 848 Date. the petitioner in the present case, the petitioner does not deserve for Oath 3/12 Narra Commissionok concession of regular bail and the petition of the petitioner deserves to be dismissed.”

9. The petitioner’s custody of around 1 year cannot be termed prolonged, given the minimum sentence prescribed for the offense.

10. In *Maulana Mohd Amir Rashadi v. State of U.P.*, (2012) 3 SCC 382, Hon’ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

11. In *Jogindro Bai v. State of Haryana*, CRM-M-51218-2024, decided on 29.11.2024, Neutral Citation No. 2024:PHHC:162096, this Court observed,

[17].Adjudicating a bail petition of an accused with a prior criminal record places a significant and exacting responsibility on courts to exercise judicial discretion in a manner that is both reasoned balanced to consider the countervailing impacts on the freedom of an accused and that of society and free from arbitrariness, as arbitrariness is antithetical to the rule of law. As a natural corollary, consideration of an accused's criminal history should be limited to cases where convictions have been secured, including those resulting in suspended sentences, and all pending First Information Reports (FIRs) in which the petitioner is formally arraigned as an accused. However, cases that culminated in acquittals, discharges, quashed FIRs, withdrawals of prosecution, or the filing of closure reports by the investigative authorities must be excluded.

[18]. Although the legal system upholds the principle that crime, not the individual, should be condemned, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles, and a recidivist often operates on precarious ground, where the weight of a significant criminal record creates an increasingly challenging terrain. Nonetheless, where the offense for which bail is sought is minor, such that arrest is generally unwarranted, or bail would ordinarily be inevitable, courts must not deny bail solely as a punitive measure intended to serve as a pre-trial deterrent. Such an approach contravenes the judiciary's obligation to uphold the foundational principles of justice and equity in bail proceedings. Another reason that dis-entitles for bail is the criminal antecedents. Considering the bail petition of an accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The

criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn, or the prosecution filed a closure report, cannot be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles. If the petitioner is granted bail, he will likely re-indulge in the crime.

12. A perusal of the bail petition and the documents attached prima facie points towards the petitioner's involvement and does not make out a case for bail. The impact of crime would not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

13. Regarding the delay in the trial, if the trial does not conclude within two years of the petitioner's custody, and the delay is not attributable to the petitioner, the petitioner may apply for bail before the trial Court. The Court shall not be influenced by the dismissal of bail on merits or by the criminal history and shall decide it on changed circumstances and the prolonged trial.

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

15. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.01.2025
M.Sikka

Whether speaking/reasoned: Yes
Whether reportable: No.